

Purviance v Snow 18 October 1938, Sonoma County (CA) Superior Court
Suit for Declaratory relief.
Depositions of Clarke (Columbia Coll of Chiro) and McClintock (California Chiro Coll,
Oakland) contained within.
Note petition to withdraw Depositions (page 12) of Adler, Wood, Cale Richardson &
Oakley. All 5 have been removed.
Case dismissed at request of Purviance.
Purviance filed in Amador County (CA) similar suit on 14 February 1939, case # 4284
and submitted deposition of Cale and Oakley as evidence.

23841

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FILED IN AND FOR THE COUNTY OF ~~SANTA ROSA~~

1938 OCT 18 PM 2 26

Percy Purviance
WALTER H. HAGLE, CO.-CLK. Plaintiff
BY *Quat*
DEP. CLK:

L. J. Snow
Defendant

Sonoma
Purviance
2301 Buchanan Blvd
Richmond annex Cal
No. 2384 Dept. No. 2
Complaint for
Declaratory Judgement

The Plaintiff complains and alleges:

I

That on the 1st day of October 1938,
plaintiff and defendant entered into a written con-
tract with words and figures as follows, to-wit:

On this 1st day of October 1938 P. Purviance,
a licensed chiropractor under the laws of the
State of California, hereinafter referred to
as the party of the first part and Dr. L. J.
Snow, a licensed chiropractor maintaining
offices in the city of Petaluma, State of
California, hereinafter referred to as the
party of the second part; have entered into
an agreement in the following manner and
particulars to wit:

"The party of the first part agrees
to work in the offices of the party of the
second part under the direction of the party
of the second part, beginning October 15th
and to treat patients of the party of the
second part, and practice chiropractic as
taught in chiropractic schools or colleges,
and also to use all necessary mechanical, and
hygienic and sanitary measures incident to
the care of the body, and shall include hy-
drotherapy, electrotherapy, light, heat,
hot and cold packs, diet, massage, enemas,
together with anatomical and manual manipu-
lations, on patients of party of the second
part.

Party of the second part agrees that
party of the first part shall receive 40 %
of all money received from patients treated
by party of the first part in the offices
of the party of the second part.

Signed: _____
Party of the first part.

II

That thereafter on the 15th day of October 1938, Plaintiff presented himself for work at the offices of the party of the second part, and party of the second part refused to comply with the terms of the said contract on the grounds that the defendant might be liable for prosecution if plaintiff was not allowed under plaintiff license to treat patients as stated in the contract, if the scope of practice under section seven of the Chiropractic Act did not allow such practice.

Wherefore plaintiff prays that the rights of the plaintiff and defendant under the contract as set forth in the complaint be declared under the provisions of Section 1060 of the Code of Civil Procedure of California; that the legal scope of the practice of plaintiff by virtue of his license under the provisions of the Chiropractic Act of California be determined and adjudged.

Percy Purviance

In proper person

STATE OF CALIFORNIA :
 : SS
COUNTY OF SANTA ROSA :

Percy Purviance being duly sworn deposes and says;- that he is the plaintiff in the above entitled action and that he has read the complaint that the same is true of his own knowledge except those matters stated therein upon his information and belief, and as to those matters, he believes it to be true.

Subscribed and sworn to
before me this 18th day of
October 1938

Percy Purviance

[Signature]
Notary Public in and for the
County of Santa Rosa, State of
California. Sonoma

FILED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
1938 OCT 18 PM 2 26 IN AND FOR THE COUNTY OF ~~SAN FRANCISCO~~

WALTER H. NAGLE, CO.-CLK.
BY

PER OLE
Percy Purviance
Plaintiff

vs.

L. J. Snow
Defendant

Sonoma

L. J. Snow

*100 Prospect St.
Petaling, Calif.*

No. 13841 Dept. No. 2

SS

Answer to Complaint.

The Defendant answers the complaint as follows, to-wit.

I

Admits the contract and all the allegations as set forth in the complaint filed herein.

II

Alleges that Defendant is justified in refusing to comply with the provisions of the contract by reason of the liability of defendant for criminal prosecution if plaintiff is not permitted to use the methods and modalities mentioned in the contract, and if not the defendant would be liable for allowing said practice by the plaintiff in the office of the defendant.

Wherefore Defendant prays that the respective rights of the plaintiff and defendant under the terms of the contract as set forth in the complaint be declared and adjudged under Chapter VIII Section 1060 of the Code of Civil Procedure of the State of California; that the legal scope of the practice of the plaintiff by virtue of his license under the provisions of the Chiropractic Act of California Section 7 of which provides:

"One form of certificate shall be issued by the board of Chiropractic Examiners, which said certificate shall be designated 'License to practice Chiropractic'."

which license shall authorize the holder thereof to practice Chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica."

And that it be declared and adjudged if plaintiff has a legal right to use said modalities mentioned in the contract.

L. J. Snow
in proper person

STATE OF CALIFORNIA :
COUNTY OF SANTA ROSA : SS

L. J. Snow being duly sworn deposes and says:-
that he is the defendant in the above entitled action
and that he has read the complaint and answers that the
same are true of his own knowledge except those matters
stated therein upon his information and belief.

And as to those matters he believe it to be
true.

L. J. Snow

Subscribed and sworn to before
me this 18th day of October 1936

W. H. Hall
Notary Public, in and for the
County of Santa Rosa, State of
California Ernest

FILED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ~~SANTA ROSA~~

1938 OCT 18 PM 2 27

WALTER H. NADLE, CO. CLK.
BY *[Signature]* Percy Purviance
DEP. CLK. Plaintiff

vs.

L. J. Snow
Defendant

No. 73841 Dept. NO. 2

Stipulation of parties
for action to be set.

In the above entitled action the parties,
Defendant and Plaintiff hereby stipulate that this
cause shall be set for trial at the earliest possible
date in accordance with section 1060a of the Code of
Civil Procedure of the State of California, and the
court is hereby asked for an order setting same for
trial.

Under Rule VII 1, and 3, of Rules of
Judicial Council of California.

Percy Purviance
Plaintiff

L. J. Snow
Defendant

FILED IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ~~SANTA ROSA~~

1938 OCT 18 PM 2 27

Sonoma

WALTER H. HAGLE, CO. CLK.
BY *Just* Purviance
DEP. CLK. Plaintiff

vs.

L. J. Snow
Defendant

No. 23841 Dept. No. 2

Stipulation of parties to
submit cause on briefs.

In the above entitled action the parties
Defendant and Plaintiff stipulate that the matter
may be submitted on briefs.

Perv Purviance

Plaintiff

L. J. Snow

Defendant

FILED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

1938 OCT 18 PM 2 27

IN AND FOR THE COUNTY OF SANTA ROSA

Sonoma

WALTER H. WAGLE, CO.-CLK.

by [signature]

DEP. CLK.

Percy Purviance
Plaintiff

vs.

L. J. Snow
Defendant

No. 23841 Dept. No. 2

Defendant's Brief

The Defendant in the above entitled action admits all the allegations of the complaint and the contract. But contends that he is justified in refusing to comply with the contract on the grounds that he might be liable for criminal action if the scope of plaintiff's license did not allow or authorize him to practice the modes of treatment mentioned in the contract.

So defendant is justified in refusing to comply with the terms of the contract if by complying with its terms, defendant is committing a crime, to allow plaintiff to practice unauthorized modes of treatments in his office as Section 31at of the Penal Code of the State of California provides:

"Principals---All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or not being present, have advised, and encouraged its commission,"

Therefore Defendant has a right under Declaratory Law Section 1060 of the Code of Civil Procedure of the State of California to have his rights and duties with respect to the plainriff adjudged and declared.

L. J. Snow
Defendant in proper person

Columbia College of Chiropractic and Naturopathy

Legally Chartered and Incorporated

3013 K Street • Sacramento, California

FILED

1938 OCT 18 AM 2 27

WALTER H. NAGLE, CO.-CLK.

BY *Walter H. Nagle* DEP. CLK.

Sacramento, California,
October 12th, 1938.

State of California. }
State of California. } 53

Dr. Herbert B. Clarke, D.C., being duly sworn desposes and says; that he is the President and Dean of the Columbia College of Chiropractic and Naturopathy a legally chartered and incorporated school under the laws of the State of California. That Chiropractic as taught in the aforesaid institution includes all mechanical hygienic and sanitary measures incident to the care of the body including, hydrotherapy, electrotherapy, light, heat, hot and cold packs, diet, massage, enemas, together with any anatomical and mechanical manipulations that will tend to remove the interference with the passage of stimuli which causes the organs of the human body to function.

Herbert B. Clarke

Subscribed and sworn to before me N. B. DREW
Notary Public in and for the County of Sacramento, State
of California this 12th day of October 1938.

N. B. Drew
My commission expires Aug 24, 1941

FILED

DEPARTMENT OF
PUBLICITY

DR. ROBERT O. MCCLINTOCK
DEAN

CALIFORNIA CHIROPRACTIC COLLEGE

-CHARTERED 1913-

1938 OCT 18 PM 2 27

~~XXXXXXXXXXXXXX~~
OAKLAND, CALIFORNIA

Tapscott Bldg.

WALTER H. TAYLOR, CO.-CLK. r
BY *Frank J. Gault*
SEP 28/1

TEMPLEBAR 0020

October 14, 1938.

State of California } ss
County of Alameda }

Dr. Robert O. McClintock, D. C., being duly sworn deposes and says; that he is the President and Dean of the California Chiropractic College, a legally incorporated and chartered College, under the laws of the State of California, located at Oakland, California. And that Chiropractic as taught in the California Chiropractic College, includes all mechanical, hygienic, and sanitary measures incident to the care of the body including hydrotherapy, electrotherapy, light, heat, hot and cold packs, diet, massage, together with any anatomical and manual or mechanical manipulation that will remove the interference of the passage of stimuli which causes organic structures of the human body to function normally.

Dr. Robert O. McClintock, D.C.

Subscribed and sworn to before me *E. Hughes* a
Notary Public in and for the County of Alameda, State of
California this *14th* day of October 1938.

E. Hughes
Notary Public in and for
Alameda Co. Calif

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SONOMA

FILED

1938 NOV 25 PM 2 20

WALTER H. HALE CO. CLERK
BY *[Signature]* DEP. CLK.

Percy Purviance	:	No. 23841	Dept. No. 2
Plaintiff	:		
vs.	:	Stipulation of parties	
	:	drop action and withdraw	
L. J. Snow	:	depositions.	
Defendant	:		

The plaintiff and defendant in the above
entitled action stipulate that the above named action
No. 23841 heretofore filed may be hereby be dropped and
the depositions filed in said action may be withdrawn
from said files by Percy Purviance, plaintiff in said
action.

Signed:

Percy Purviance
Plaintiff in proper person

Signed:

L. J. Snow
Defendant in proper person

FILED

1938 NOV 25 PM 2 20

WALTER H. NABLY, CO.-CLK.
BY *[Signature]* DEP. CLK.

IN THE
SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SONOMA

Percy Purviance,

Plaintiff

No. 23841

Dept. No. 2

vs.

L. J. Snow,

Defendant

Order to Withdraw Exhibit

Upon application of Percy Purviance, Plaintiff ~~AND~~

~~for~~ it is ordered that he be permitted to withdraw

~~EXHIBIT~~ ~~MA~~

Deposition of Dr. Wolf Adler, D.C.
Deposition of Dr. Charles H. Wood, D.C.
Deposition of Dr. Linnie A. Cale, D.C.
Deposition of Dr. A. W. Richardson, D.C.
Deposition of Dr. Nelson Clewell Oakley, D.C.

introduced in evidence in the above entitled case.

And the County Clerk is hereby directed to deliver said ~~EXHIBIT~~ Depositions to
Percy Purviance, Plaintiff and take a receipt therefor.

Dated November 25, 1938.

[Signature]
Judge of the Superior Court.

Received above Exhibit as per this order.

[Signature]
~~EXHIBIT~~ Plaintiff

1938 NOV 25 PM 2 20

WALTER H. HAGLE, CO.-CLK.
BY *[Signature]*
DEP. CLK.

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SONOMA

Percy Purviance,

Plaintiff

vs.

L. J. Snow,

Defendant

No. 23841 Dept. 2.

Attorney for

DISMISSAL

To the Clerk of the Above-Entitled Court:

You are hereby requested to dismiss the above-entitled action, to file this request with the papers in the case, and to make the said dismissal by entry in the Clerk's Register in said action.

Dated November 25, 1938

Percy Purviance
Plaintiff.

FILED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ~~SANTA ROSA~~

Sonoma

1938 OCT 18 PM 2 27

Percy Purviance
Plaintiff

WALTER H. NAGLE, CO.-CLK.

BY *Walter H. Nagle*

DEP. CLK.

L. J. Snow
Defendant

No. 7384 Dept. NO. 2

Plaintiff's Brief.

I.

The issues in this case are whether plaintiff under the provisions of the contract has a right to practice the methods and modes of treatment required by the contract, under his chiropractic license.

The Chiropractic Initiative Act state 1923 P lxxxviii provides in Section 7, "One form of certificate shall be issued by the Board of Chiropractic Examiners, which said certificate shall be designated "License to practice chiropractic", which license shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry, or optometry, nor the use of any drug or medicine now or hereafter included in materia,"

In Evans V McGranaghan 4 Cal. App. (2d) Page 202, the Court says at Page 204 "(1)" as we construe.

Section 7 of the Chiropractic Act, it authorizes the licensed holder to practice chiropractic as taught in schools or colleges of chiropractic, regardless of whether such practice would have been construed as the practice of medicine, surgery, osteopathy, den-

tistry or optometry prior to the enactment of the Chiropractic Act."

(3) "The Chiropractic Act authorizes the licensed holder to use all necessary mechanical and hygienic measures incident to the care of the body which are included in chiropractic as taught in chiropractic schools or colleges, if any there be, together with any other such necessary mechanical, hygienic and sanitary measures the use of which would not constitute the practice of medicine, surgery, osteopathy, dentistry, or optometry, nor involve the use of any medicine or drug now or hereafter included in materia medica,"

(4) At Page 205 the court says:

"The intent of the statute is clear upon its face! That the license shall authorize the holder to practice chiropractic as taught in chiropractic schools or colleges. But the court has no way of determining the scope of chiropractic as taught in such schools and colleges in the absence of evidence on that subject, and hence a resort to such evidence would be proper."

In People V Schuster 10 Pacific 2d series Page 204. At Page 206 (7) the Court says:

"It is stipulated that defendant was a licensed chiropractor, hence, he would establish a defense by showing that the treatments he offered to give were a part of the practice of chiropractic. The criterion established by the Chiropractic Act in this matter, except as to the use of medicine and other acts expressly excluded from the scope of chiropractic, is the teaching of chiropractic schools and colleges. Section 7.

It was therefore error to reject defendant's offer to prove that the treatments offered by him were taught in chiropractic schools and colleges as a part of chiropractic and as evidence that the methods and mechanical treatments mentioned in the contract are a part of chiropractic as taught in chiropractic schools and colleges." Plaintiff submits affidavits from presidents and heads of chiropractic colleges declaring these things mentioned in the contract are taught as a part of chiropractic."

Chiropractic is a science and an art. As a science, it declares that all the functions of the body are carried on by the stimulus which passes over the nerves to the organs, or passes through the blood streams in the form of a hormone. Disease is disordered from function and anything that interferes with the passage of stimuli interferes with function and thus causes disease.

Chiropractic seeks to remove the interference with the normal passage of stimuli whether over the nerves to organs or to the passage of stimuli through the blood stream in the form of hormones.

The art of chiropractic is the skill or training in the methods used to remove the interference of the passage of stimuli.

Therefore, any of the methods mentioned in the contract can be used as chiropractic to secure the results required which is to establish the normal activity of the organs of the human body.

And as a chiropractic license gives the holder thereof the right to practice chiropractic as taught in chiropractic colleges and by the affidavits we show that these things are taught as chiropractic in chiropractic schools and colleges.

And section 18 of the Chiropractic Act provides:

"Nothing herein shall be construed as repealing the medical practice Act of June 2, 1913, or any subsequent amendments thereof, except in so far as that Act or said amendment may conflict with the provisions of this act as applied to persons licensed under this act, to which extent any and all acts or parts of acts in conflict herewith are hereby repealed"

The Chiropractic Act is an Initiative Act passed by the people and can only be changed by the people and takes precedence of any legislative act and repealed all acts in conflict with it as applied to persons licensed under said act.

This is an action under 1060 Code of Civil Procedure of State of California which states under Declaratory Relief:

"Any person interested under a deed, will, or other written instrument, or under a contract, or who desires a declaration of his rights or duties with respect to another,-- may, in case of an actual controversy relative to the legal rights and duties of the respective parties, bring an action in the superior court for a declaration of his rights and duties in the premises, including a determination of any question or validity arising under such instrument or contract."

Points and Authority:

The right to bring action to determine construction of a statute.

In Greenfield, V. Plan. Com. of Los Angeles, 81 Cal. Appl. Decisions 618 where the sole question was the construction of a written instrument to-wit, a city ordinance.

In Evans V. McGranaghan, 4 Cal. App. Reports 2d Page 202, The question at issue was the right of a chiropractor under a certain section of the Chiropractic Act and whether the performance of the requirements of the contract was a crime.

In Andrews V City of Piedmont 281 Pac. 78.

The question was relative to a municipal zoning ordinance.

Signed:

Perry Turriance

Plaintiff in proper person